IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITC No. 57 of 1999
Date of decision 8. 8 .2007

Commssioner of Income Tax, Rohtak .. Petitioner

Versus

M/s Haryana Minerals Ltd., Faridabad .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Yogesh Putney, Advocate for the petitioner

M.M.Kumar, J.

This petition filed under Section 256(2) of the Income Tax Act,1961 (for brevity 'the Act') challenges order dated 28.7.1998 passed by the Income Tax Appellate Tribunal, Delhi Bench (D), New Delhi (for brevity 'the Tribunal') in RA No.16/Del/98 dismissing the application filed by the Revenue under Section 256(1) of the Act. The Revenue has claimed that the following two questions of law deserved to be referred for the opinion of this Court and would emerge from the order dated 3.10.1997 passed by the Tribunal in ITA No.3957/Del/90 in respect of the assessment year 1988-89:

> "1. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in law in holding that merchandise exported by the assessee do not constitute 'minerals and Ores' within the meaning of section 80-HHC(2)(b)(ii); and
>
> 2.Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in law in giving retrospective effect

to the insertion made in sub clause (ii) of clause (b) of sub Section (2) of Section 80 HHC, by Finance (No.2) Act, 1991 w.e.f. 1.4.1991 ?".

Mr. Yogesh Putney, learned counsel for the Revenue, at the outset has pointed out that in the case of same assessee earlier in respect of assessment year 1984-85, the Tribunal had refused to refer the afore-mentioned two questions for the opinion of this Court. The afore-mentioned order of the Tribunal was challenged and accordingly this Court while allowing ITC No.40 of 1997 directed the Tribunal exercising power under Section 256(2) of the Act to draw the statement of the case and refer the afore-mentioned two questions for its opinion. He has further pointed out that in ITR No.32 of 1999 (The Commissioner of Income tax, Haryana, Rohtak v. Haryana Minerals Ltd., Nizampur Road, Narnaul) both the questions have now been decided by a Division Bench of this Court on 12.1.2005 in favour of the Revenue and against the assessee.

No one has put in appearance for the assessee despite service.

After hearing learned counsel for the Revenue we find that question No.1 has been answered in favour of the Revenue on the basis of the judgement of Hon'ble the Supreme Court in the case of M/s Gem Granites v. Commissioner of Income tax Tamil Nadu (2005) 26 ITR 1 (SC). The observations of the Division Bench in that regard reads as under:

".... it is sufficient to mention that the CIT(Appeals) as well as the Tribunal have treated the provisions of the amended Section 80 HHC of the Act applicable to the case of the assessee as if the amendment made by Finance Act No.2 of 1991 was retrospective. This has to be treated as legally unsustainable in

view of the law laid down by the Supreme Court in M/s Gem Granites Versus Commissioner of Income Tax, Tamil Nadu (supra). As a corollary to this, it must be held that the order passed by the Assessing Officer to rectify the mistake committed earlier by allowing deduction to the assessee on the basis of amended Section 80 HC does not suffer from any legal infirmity."

Likewise, question no. 2 has also been answered in favour of the Revenue and against the assessee. In that regard again reliance was placed on the judgement in the case of M/s Gem Granites (supra) wherein Section 80 HHC(unamended) alongwith the amendment made by Finance Act No.2 of 1991 was considered. Applying the ratio of the judgement of Hon'ble the Supreme Court in respect of the assessment year 1984-85 it was held that the benefit of amendment made in Section 80 HHC by Finance Act No.2 of 1991 could not have been extended to the assessee in relation to the assessment year 1984-85. The position would not be different with respect to assessment year 1988-89 which is the year under consideration in the instant case.

We would have allowed the instant petition filed by the Revenue and issued directions to the Tribunal to draw up a statement of case and refer the afore-mentioned two questions for the opinion of this Court. However, the necessity of taking the afore-mentioned course is obviated for the reason that the question stands already answered in favour of the Revenue and against the assessee in Haryana Minerals Ltd.'case (supra) which is a case belonging to the assessee itself in respect of earlier assessment year 1984-85. Therefore, instead of referring the questions once

again for our opinion we follow the view taken by a Division Bench of this Court in Haryana Minerals Ltd.'s case (supra) in the case of the assessee itself in respect of assessment year 1984-85 and answer the question in favour of the Revenue and against the assessee

The petition stands disposed of in the above terms.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

8.8.2007
okg